IN THE COURT OF THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 42 OF 2004

Sine Fine Advertising Pvt. Ltd.,
a company incorporated under the Indian Companies Act, 1956 having its Registered Office at Room No.74, 4th Floor, Laxmi Insurance Building, Sir P.M. Road, Fort, Mumbai 400 001 (through its duly constituted Power of Attorney Holder Shri Pramod Faterpekar, Residing at M-46, H.S.G. Board, At Alto Porvorim, Off. Panaji Mapusa Road, Bardez, Goa 403 001. ..... Appellants.

V/s.

Mrs. Salette Miranda e Shetty,
Residing at C/o. Tiny - Tots Kindergarten School, House No.683, Survey No. 60 Betim Village District Town Bardez, Goa. ..... Respondent.

Mr. S.D. Lotlikar, Sr. Advocate with Mr. Rohit Bras de Sa, Advocate for the appellants

Mr. V.A. Lawande, Advocate for the respondent.

CORAM : S.S. PARKAR, J.

DATE : 10TH JUNE, 2005

ORAL JUDGMENT :

Heard both sides. This appeal is filed challenging the Order dated 31st July, 2004, passed by the Civil Judge, Sr. Division at Mapusa dismissing the application for temporary injunction. There was an

agreement between the parties whereby the defendant/respondent gave permission to the appellants/plaintiffs to erect and display the neon sign in her property on 12.11.1998 for a period 5 years, commencing from 1.12.1998 and expiring on 31.12.2003, wrongly mentioned as 31.12.2004 in the letter/agreement dated 12.11.1998.

2. After the expiry of the said period, the plaintiffs wanted the defendant to renew the said agreement for a further period of five years on payment of 10 % increase in the annual advance rent. Initially, the annual advance rent payable was Rs.12,000/- per annum. The defendant, however, by letter dated 17.1.2004 refused to renew the said agreement and had called upon the plaintiffs to remove the neon sign board from her property, within a period of seven days from the date of the said letter. The plaintiff, therefore, filed the suit, inter alia for injunction restraining the defendant from taking any action in pursuance of the notice cum letter dated 17.1.2004 and also for mandatory injunction from obstructing the plaintiffs from installing the generator and diesel tank and other machinery which according to the plaintiffs, were illegally and forcibly removed by the defendant on 28.1.2004. An application was also made for temporary injunction. Initially order of status quo was passed which was continued till the month of May, 2004.

3. The plaintiffs are relying on the letter/agreement dated 12.11.1998 on a stamp paper of Rs.10/- . According to the plaintiffs, on the basis of the clauses in the agreement, the defendant was bound to renew this agreement every five years, by enhancing 10 % increase in the annual advance rental charges at the end of every block of 5 years. From the original document produced on behalf of the appellants, it appears that the defendant in her own handwriting had made changes in the said letter by adding the words “at my discretion” in the sixth line of page 2 by scoring out the typed words “for the next period of 5 years term w.e.f. 1-1-2005 by enhancing”. There is also addition of words “mutual consent”, by hand in the next line. Initial has been put by the defendant with date 12/11 put below her initial. It is contended on behalf of the appellant that the words “at my discretion” and “mutual consent” were also deleted which appears from the original agreement/letter produced on behalf of the appellants/plaintiffs. No doubt that reading of the agreement with the scoring out of the typed as well as written portion, the clause in the agreement does make sense, however, in the written statement, the stand taken by the defendant is that the defendant did not agree with the renewal clause in the letter which was sent to her on behalf of the plaintiffs for her signature and therefore, she scored out the typed portion and in her own handwriting inserted the words “at my discretion”. The plaintiffs, however, wanted the defendant to put instead the words

“mutual consent”. Realising that the words “mutual consent” might come in her way, she cancelled the words “mutual consent” and put the words “at my discretion”. It is the defendant's case that the plaintiffs have deliberately scored out the hand written words “my discretion”. The learned Counsel for the respondent argued that this stand taken in the written statement or reply/affidavit has not been denied on behalf of the plaintiff s by filing rejoinder. Apart from that what I find is that the initials put by the defendants are at the end of the 6th line on page 2 of the letter of 12.11.1998 and, thereafter, at the beginning of 7th line on that page. On both the lines, there are scoring out twice, the typed portion and the written portion and, therefore, if the defendant had done scoring, she would have been asked to put her initials twice. Her initialing on line No.6 as well as line No.7 is once only. It means that she had initialed for cancellation of the typed portion and substituted the hand written portion and she must not have cancelled the handwritten portion herself, in which case the plaintiffs would have asked her to put her initials again. In view of the aforesaid position, I do not find any fault with the impugned order.

4. On behalf of the appellants, it is pointed out that the appellants had erected the neon sign board by spending about Rs.12,00,000/-, which cannot be used by the defendant. It is further argued that the defendant herself has entered into agreement with

the United Breweries Ltd., whose hoarding was put up by the plaintiffs. On behalf of the respondent, it is argued that the defendant denied in her written statement that the plaintiffs had invested Rs.12,00,000/- for the purposes of erecting hoarding and neon sign board and on the contrary they have obtained a letter dated 1.11.2004, from United Breweries Ltd., certifying that neon sign board situated on her plot, belongs to the said Company. In other words, the defendant denied that the investment was made by the plaintiffs for putting up the neon sign board. In my view, this is altogether a different issue which can be decided after the parties lead evidence on that point.

5. It is an admitted fact that right from January, 2004 till today the plaintiffs have not used the neon sign board. Initially, there was an interim order of maintenance of status quo until 14th May, 2004 and thereafter also no one was using the place for hoarding . Since the plaintiffs are admittedly not using the neon sign board for display of hoardings fixed at the site, from January, 2004 until today, there is no question of granting temporary injunction.

6. In the result, the appeal from order is rejected.

S.S. PARKAR, J.

ssm.